

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

JOSEPH ENGEL,

Plaintiff,

v.

CORIZON MEDICAL, et al.,

Defendants.

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No. 4:20-CV-1507 RLW

**MEMORANDUM AND ORDER**

Before the Court is plaintiff's post-dismissal filing of an amended complaint. Pursuant to the prison mailbox rule, the amended complaint, as well as plaintiff's motion to proceed in forma pauperis, was filed untimely in this action even though it was placed in the prison filing system on or about November 11, 2020.<sup>1</sup> Despite this untimely filing, however, the Court will vacate the Rule 41(b) dismissal entered on November 19, 2020. *See* Docket No. 4.

For this Court to review plaintiff's amended complaint pursuant to 28 U.S.C. § 1915, however, plaintiff will need to withdraw his notice of appeal in this action. The Court will allow plaintiff twenty-one (21) days to file a withdrawal of his notice of appeal with this Court. He should file the withdrawal of his notice of appeal in this action and place this Court's case number on the notice of withdrawal so that his filing is placed in the proper case. Plaintiff's failure to withdraw his notice of appeal in this action will result in the grant of plaintiff's motion to proceed in forma pauperis on appeal and an assessment of the appellate filing fee.

Accordingly,

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<sup>1</sup> According to the Court's calculations, plaintiff's amended complaint was required on November 10, 2020. Docket No. 2.

**IT IS HEREBY ORDERED** that the Rule 41(b) dismissal entered on November 19, 2020 [Doc. #4] in this action is **VACATED**.

**IT IS FURTHER ORDERED** that if plaintiff wishes for this Court to take up the review of his amended complaint, he must withdraw his notice of appeal in this action. **Plaintiff must file his withdrawal of his notice of appeal within twenty-one (21) days of the date of this Memorandum and Order if he wishes to do so. He must include the case caption and case number on his withdrawal notice.**

**IT IS FURTHER ORDERED** that if plaintiff fails to withdraw his notice of appeal within twenty-one (21) days of the date of this Memorandum and Order, the Court will Order the Missouri Department of Corrections to begin collecting payments from plaintiff's prison account in accordance with 28 U.S.C. § 1915(b)(2) until the \$505 appellate fee is paid in full.

Dated this 11<sup>th</sup> day of December, 2020.

  
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RONNIE L. WHITE  
UNITED STATES DISTRICT JUDGE